

Public Chapter 164

SENATE BILL NO. 1700

**By Atchley, McNally, Elsea, Person, Gilbert, Leatherwood, Jordan, Miller, Ramsey,
Williams, Carter, Crowe, Koella, Fowler**

Substituted for: House Bill No. 1808

By McKee, McDaniel, Stamps, Davis

AN ACT To amend the Tennessee Securities Act of 1980, Tennessee Code Annotated, Title 48, Chapter 2, Part 1, relative to the Federal National Securities Markets Improvement Act of 1996.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-2-102, is hereby amended by adding the following definition as an appropriately numbered subdivision:

() "Covered security" means any security:

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange or listed on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing on a national securities exchange or (tier or segment thereof) that has listing standards that the Securities and Exchange Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A);

(C) that is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B);

(D) issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940;

(E) sold to qualified purchasers, as defined by the Securities and Exchange Commission;

(F) that is issued in connection with a transaction that is exempt from registration under the Securities Act of 1933 pursuant to:

(i) Paragraph (1) or (3) of Section 4 of the Securities Act of 1933;

(ii) Section 4(4) of the Securities Act of 1933;

(iii) Section 3 of the Securities Act of 1933, other than the sale of a security that is exempt from such registration pursuant to paragraph (4) or (11) of Section 3(a) of the Securities Act of 1933, except that a municipal security that is exempt from registration under the Securities Act of 1933 pursuant to paragraph (2) of Section 3(a) of that act is not a "covered security" with respect to the sale of such security in Tennessee if the issuer of such security is located in Tennessee;

(iv) Securities and Exchange Commission rules or regulations issued under Section 4(2).

SECTION 2. Tennessee Code Annotated, Section 48-2-102, is hereby amended by adding the following definition as an appropriately numbered subdivision:

() "Senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

SECTION 3. Tennessee Code Annotated, Section 48-2-104, is amended by deleting the language contained therein and substituting the following:

It is unlawful for any person to sell any security in this state unless: (1) it is registered under this part; (2) the security or transaction is exempted under Section 48-2-103; or (3) the security is a covered security.

SECTION 4. Tennessee Code Annotated, Section 48-2-109, is amended by deleting subdivision (c) in its entirety and by substituting instead the following:

(c) It is unlawful for any person to transact business from or in this state as an investment adviser unless:

(1) The person is registered as an investment adviser under this part;

(2) The person is required to register as an investment adviser pursuant to Section 203 of the Investment Advisers Act of 1940, provided, however, that a notice, consisting of any documents filed with the Securities and Exchange Commission, a consent to service of process, and a nonrefundable fee of \$100, shall be filed with the commissioner 10 days prior to the person acting as an investment adviser as defined by Section 48-2-102(7) and annually by January 31 of each successive year in which such person acts as such investment adviser; or

(3) The person's only clients in this state are insurance companies.

SECTION 5. Tennessee Code Annotated, Section 48-2-114(a), is hereby amended by inserting the phrase "or notice filing" between the terms "registration" and "under" and between the terms "statement" and "under".

SECTION 6. Tennessee Code Annotated, Section 48-2-117(c), is hereby amended by inserting the phrase "notice filing" between the words "application" and "or".

SECTION 7. Tennessee Code Annotated, Section 48-2-121(b)(3), is amended by deleting the language contained in subparagraph (3) in its entirety and by substituting the following language:

(3) Take or have custody of any securities or funds of any client except as the commissioner may by rule permit or unless the person is licensed as a broker-dealer under this part.

SECTION 8. The Tennessee Securities Act of 1980 is hereby amended by adding the following as a new appropriately codified statutory provision:

Notice Filings for Covered Securities.

(a)(1) Any issuer, except an issuer of any security that is a covered security under § 48-2-102()(F)(iv), which proposes to sell any security which is a covered security shall file with the commissioner, prior to a sale of such security in this state, a notice consisting of all documents filed with the Securities and Exchange Commission, together with:

(A) annual or periodic reports of the value of securities sold or offered to be sold in this state (if such sales data is not included in documents filed with the Securities and Exchange Commission);

(B) a consent to service of process as provided under Section 48-2-124(e) and;

(C) a non-refundable filing fee of \$500.00.

Notwithstanding subparagraphs (A), (B), and (C), no filing or fee is required with respect to any security that is a covered security pursuant to Section 48-2-102()(A), (B), or (C), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to § 48-2-102()(A), (B), or (C).

(2) After the initial offer of such covered security in this state, all documents that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 shall be filed concurrently with the commissioner.

(b) With respect to any security that is a covered security under § 48-2-102()(F)(iv), the issuer shall file with the commissioner, no later than 15 days after the first sale of such covered security in this state, a notice consisting of:

(1) An SEC Form D, including the Appendix and Part E signed by the issuer;

(2) A consent to service of process signed by the issuer; and

(3) A non-refundable filing fee of five hundred dollars (\$500.00).

For purposes of this section, "Form D" is defined as the document, as adopted by the Securities and Exchange Commission and in effect on September 1, 1996, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption", including Part E and the Appendix.

(c)(1) Notice filings made pursuant to subparagraph (a) of this provision expire annually on December 31 of each year, except notice filings made by an investment company that is registered under the Investment Company Act of 1940, or that has filed a registration statement under the Securities Act of 1933. Notice filings may be renewed by making a filing and paying a fee as provided under subparagraph (a) of this provision no later than the close of business on the tenth business day prior to the date of expiration.

(2) Notice filings made by an investment company that is registered under the Investment Company Act of 1940, or that has filed a registration statement under the Securities Act of 1933 expire annually two months after the issuer's fiscal year end and may be renewed by making a filing and paying a fee as provided under subparagraph (a) of this provision within two months after the issuer's fiscal year end.

(d) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, upon a finding that (1) the order is in the public interest and (2) there is a failure to comply with any filing or fee required under this part. Any issuer of a covered security that does not promptly remedy a delay in payment of any fee or promptly remedy a delay in making any filing required under this part shall be deemed not to have complied with such filing or fee requirements. For purposes of this provision, an issuer will have promptly remedied a delay in payment or filing if such issuer remits such required fee or filing within ten business days of receipt of notification of the delay or underpayment.

SECTION 9. Section 4 and Section 7 of this bill shall become effective July 8, 1997, the public welfare requiring it. All other sections of this bill shall become effective upon becoming law, the public welfare requiring it.